

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DIVISION

Award Number 24069
Docket Number CL-24230

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Denver and Rio **Grande** Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-9502)
that:

(1) Carrier violated and continues to violate Rule 1, Rule 21.
and other related rules of the telegraphers agreement when it allows employees
other than telegraphers or dispatchers to handle train orders.

(2) Carrier shall now be required to compensate the senior available
employee eight (8) hours at the appropriate rate of pay beginning March 31. 1980
and continuing until the violation is corrected.

OPINION OF BOARD. **The** Organization contends that Carrier violated Rules 1 and
21 of the Telegrapher's Agreement when it permitted
employees other than telegraphers or dispatchers to handle train orders.
Specifically, the Organization argues that **C**arrier violated Paragraph C of Rule
21 **which** precludes the use of train and engine service employees from transmitting
or receiving train orders, clearances, written **messages** or blocking or reporting
trains by telephone or telegraph except in emergencies. It asserts that
Carrier's previous abolishment of the two telegraphers' positions at Colorado
Springs on March 3, 1980 was a veiled attempt to avoid the purposes of the
Telegrapher's Collective Bargaining Agreement by transferring their work to other
employees.

Carrier argues that it did not violate the Agreement since no employee
covered by the Telegrapher's Agreement was employed at Colorado Springs and thus
it was permissible for train crew personnel to handle train orders. It avers
that there **were** no telegraphers employed at any of the locations where the tramp
switcher traveled and asserts that the issuance of train orders to employees
other than telegraphers at locations where telegraphers are **not employed** is
consistently observed on a system wide basis.

In our review of this case, we concur with Carrier's position.
Firstly, consistent with our decisional law, Carrier **is** not estopped from
abolishing a position or rearranging work assignments unless restricted by the
Controlling **Agreement**. The current labor agreement does not preclude or qualify
Carrier's right to abolish positions and the record is bereft of any evidence
that the **two** telegrapher positions at Colorado Springs were abolished so as to
transfer their work to other employees. Secondly, Rule 21 which is relied upon
by both sides **does not** prevent Carrier **from** using non-agreement **covered** employees
at locations where telegraphers are not employed. Carrier has asserted
that the practice has been observed on a system wide basis, which the Organization
contends is correct only to the extent that it was observed at locations where

telegraphers were never employed; but the latter assertion was never proven. **Whether** telegraphers were previously assigned to the location does not vary the intended purpose of the practice observed. If this were not so, Carrier would be barred **from** reducing telegrapher forces **when** warranted by changed economic conditions. In the instant case, when the two telegraphers' positions were abolished at Colorado Springs, Paragraph (A) of Rule **21** **was** thereafter applicable at that location. It is at locations **where** telegraphers are not present that non-agreement covered **employees are permitted** to handle train orders. Accordingly, given the facts of record, we are constrained to follow the basic principle enunciated **in** Third Division Award No. **19927**, wherein we held in pertinent part that:

"If train orders are handled at points where no covered employees are employed, under Article 20 they may be handled by other employees."

We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the **meaning of** the Railway Labor Act, as approved June 21, **1934**;

That this Division of the Adjustment Board has **jurisdiction over the** dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By

A handwritten signature in cursive script, appearing to read "Rosemarie Brasch", written over a horizontal line.

Rosemarie **Brasch** - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.